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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[Docket No. USCBP-2016-0061; CBP Dec. 16- 15]

RIN 1515-AE12

Notice of Arrival for Importations of Pesticides and Pesticidal Devices

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations pertaining to the importation of pesticides and pesticidal devices into the United States subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, CBP is amending the regulations to permit the option of filing an electronic alternative to the U.S. Environmental Protection Agency's (EPA) "Notice of Arrival of Pesticides and Devices" (NOA) paper form, with entry documentation, via any CBP-authorized electronic data interchange system. This change will support modernization initiatives, including implementation of the International Trade Data System (ITDS). This document also makes non-substantive conforming and editorial changes to the CBP regulations.

DATES: This interim final rule is effective (INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**). Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by docket number USCBP-2016-0061, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street N.E., 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2016-0061. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of the document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street N.E., 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: For questions related to the filing of EPA forms with CBP, contact William R. Scopa, Branch Chief, Partner Government Branch, Inter-Agency Collaboration Division, Office of Trade, U.S. Customs and Border Protection, at william.r.scopa.cbp.dhs.gov. For EPA-related questions, contact Ryne Yarger, Environmental Protection Specialist, Field and External Affairs Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, at yarger.ryne@epa.gov, telephone (703) 605-1193.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. See ADDRESSES above for information on how to submit comments. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

I. The Federal Insecticide, Fungicide and Rodenticide Act

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.), provides for federal regulation of pesticide distribution, sale, and use in the United States. Section 3 of the FIFRA, 7 U.S.C. 136a, requires that, with limited exceptions, all pesticides distributed or sold in the United States must be registered (licensed) by the U.S.

Environmental Protection Agency (EPA). Section 17(c)(1) of the FIFRA, 7 U.S.C. 136o(c)(1), provides for EPA review of pesticides and devices being imported into the United States and authorizes U.S. Customs and Border Protection (CBP), at the request of EPA, to delay or refuse admission of imports that appear, from examination, to be adulterated, or misbranded, or otherwise violate the provisions of the FIFRA or are injurious to human health or the environment. Section 17(e) of the FIFRA, 7 U.S.C. 136o(e), provides that CBP, in consultation with EPA, will prescribe regulations for the enforcement of section 17(c).

Under the FIFRA, EPA has authority to regulate the distribution or sale of registered and unregistered pesticides and pesticidal devices into the United States. In order to facilitate compliance with the FIFRA, the filing of EPA Form 3540-1 (“Notice of Arrival of Pesticides and Devices,” hereinafter referred to in this document as “NOA”) is required to notify EPA of the arrival of imported pesticides and devices and serves to assist EPA and CBP in fulfilling their statutory obligation under the FIFRA to regulate the importation, distribution, or sale of pesticides and devices in the United States. The NOA can be found in fillable .pdf format on EPA’s “Compliance” website at <https://www.epa.gov/compliance/epa-form-3540-1-notice-arrival-pesticides-and-devices>.

II. Current Pesticide and Device Importation Procedures

The statutory provisions set forth in section 17(c) of the FIFRA, 7 U.S.C. 136o(c), are implemented in the CBP regulations at §§ 12.110 through 12.117 of title 19 of the Code of Federal Regulations (19 CFR 12.110-12.117) and prescribe the administration of CBP’s pesticide and device import program.

Currently, when a pesticide or device is to be imported into the United States, the importer of record or its agent must submit, prior to arrival, a NOA to the EPA regional office with responsibility for the port of entry where the merchandise will be entered. EPA reviews and evaluates the information presented on the NOA and determines the disposition to be made of the shipment of the pesticides or devices upon their arrival in the United States. EPA may request additional information to make its determination on whether the pesticides or devices satisfy the requirements of the FIFRA. Upon review of the NOA, EPA will inform CBP of the action to be taken with respect to the shipment. The possible actions include release, detention, or refusal of entry of the shipment. The determination is indicated on the completed NOA form, which is signed by an EPA official and returned to the importer or its agent. The importer or the importer's agent must submit the completed NOA form to CBP along with the documentation required for the entry of merchandise. CBP will follow EPA's disposition instructions in the NOA and notify EPA when discrepancies exist between the NOA and the entry documents.

III. Explanation of Interim Amendments to CBP Regulations

CBP, in consultation with EPA, is amending the CBP regulations to permit the option of filing an electronic alternative to the NOA with the entry documentation, via any CBP-authorized electronic data interchange system. The NOA may still be filed in a paper format with the EPA prior to arrival of the shipment, and the completed NOA must be filed with CBP at the time of entry.

These changes liberalize filing procedures and implement modernization initiatives including the International Trade Data System (ITDS), as established by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109-347, 120 Stat. 1884, by utilizing a single-window system for the collection and distribution of standard

electronic import and export data required by participating Federal agencies. These amendments will allow electronic collection, processing, sharing, and review of requisite trade data and documents during the cargo import process.

A discussion of the amendments to 19 CFR 12.110 – 12.117, other than non-substantive editorial changes, is set forth below.

Section 12.111

Existing § 12.111 (19 CFR 12.111) provides that all imported pesticides are required to be registered under the provisions of section 3 of the FIFRA, and pursuant to 40 CFR 162.10, before being permitted entry into the United States. Devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular.

CBP is amending this section to update an EPA regulatory citation and to conform to EPA regulations that allow certain pesticides to be imported without registration.

Section 12.112

Existing § 12.112(a) (19 CFR 12.112(a)) provides that prior to arrival of pesticides or devices into the United States, the importer must submit a NOA to the Administrator of the EPA. EPA will complete the NOA, indicating the disposition to be made of the shipment of pesticides

or devices upon its arrival in the United States, and return it to the importer or its agent. Existing § 12.112(b) exempts importers of chemicals imported for use other than as pesticides from the requirement to submit a NOA.

This rule liberalizes the procedures set forth in 19 CFR 12.112(a) by permitting the option of filing an electronic alternative to the NOA, with the entry documentation, via any CBP-authorized electronic data interchange system. The NOA may still be filed in a paper format, however it must be submitted to the EPA prior to arrival of the shipment.

Section 12.113

Existing § 12.113 (19 CFR 12.113) prescribes the presentation of the NOA to CBP, and the ramifications of failure to do so. Specifically, paragraph (a) requires that upon arrival of a shipment of pesticides or devices into the United States, the importer or its agent must present the completed NOA to the CBP port director and the port director will notify EPA of any discrepancies between the entry documents for the shipment and the information contained in the NOA. Paragraph (b) provides that where a completed NOA is not presented to CBP upon arrival, the shipment will be detained by CBP at the importer's risk and expense until the completed NOA is presented or until other disposition is ordered by EPA. The detention may not exceed 30 days, unless extended by CBP for good cause for a period not to exceed an additional 30 days. The importer or his agent may also request CBP for an extension of the initial 30-day detention period. Paragraph (c) provides that a shipment that remains detained or undisposed of due to failure to present a completed NOA or non-receipt of the EPA shipment

disposition order as to its disposition will be treated as a prohibited importation. CBP will cause the destruction of any such shipment not exported by the consignee within 90 days after the expiration of the detention period.

CBP is amending § 12.113 to clarify that CBP must be in receipt of the completed NOA at the time of entry, and not upon arrival, and that an electronic alternative to the NOA may be filed via any CBP-authorized electronic data interchange system with the filing of the entry documentation.

Section 12.115

Section 12.115 (19 CFR 12.115) prescribes the terms applicable to when a shipment of detained pesticides or devices may be released to the consignee under bond pending an examination by EPA as to whether the goods comply with the requirements of the FIFRA.

CBP is amending this section to conform to 19 CFR part 133 which permits the electronic filing of bonds.

Section 12.116

Section 12.116 (19 CFR 12.116) prescribes the manner by which CBP will deliver samples of the imported pesticides or devices, and any related information, to EPA.

CBP is amending this provision by removing the reference to “in writing” to reflect that CBP may notify the consignee electronically.

Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.

Treasury and CBP find that prior notice and comment procedures are unnecessary and that good cause exists to issue these regulations effective upon publication. Prior procedures are unnecessary because the rule does not substantively alter the underlying rights or interests of importers or filers, but only expands the options available to filers in presenting required information to the agency.

Executive Orders 13563 and 12866

Executive Orders (E.O.) 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule is not a “significant regulatory action,” under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed this regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Paperwork Reduction Act (PRA)

The information collection activities associated with the existing requirements related to the submission of a paper NOA under 19 CFR 12.110-12.117, are currently approved by OMB under OMB control number 2070–0020 (EPA ICR No. 0152.10). This rule adds an electronic filing option to the existing paper filing option, in which the information collection activities for the electronic filing of a NOA have been approved under OMB control number 2070-0020 (EPA ICR No. 0152.11). There is no change in burden hours as a result of this rule.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his or her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Pesticides and devices, Reporting and recordkeeping requirements.

Amendments to Part 12 of the CBP Regulations

For the reasons set forth in the preamble, 19 CFR part 12 is amended as set forth below.

PART 12--SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, and the specific authority citations for sections 12.110 through 12.117, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

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Sections 12.110 through 12.117 also issued under 19 U.S.C. 1484 and 7 U.S.C. 136 et seq.

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§ 12.110 [Amended]

2. Section 12.110 is amended:

a. In the first sentence, by removing the word “shall”; and

b. In the second sentence, by removing the words “shall mean” and adding in their place the word “means”.

§ 12.111 [Amended]

3. In § 12.111, the first sentence is amended by removing the word “All” and adding in its place the word “Certain”, and by removing the number “162.10” and adding in its place the language “part 152”.

4. Section 12.112 is amended by revising paragraph (a) to read as follows:

§ 12.112 Notice of Arrival of pesticides and devices filed with the Administrator.

(a) General. An importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices (Notice of Arrival) on U.S. Environmental Protection Agency (EPA) Form 3540-1. The Administrator will complete the Notice of Arrival and provide notification to the importer or the importer’s agent indicating the disposition to be made of a pesticide or device upon its entry into the United States. In the alternative, the importer or the importer’s agent may file an electronic alternative to the Notice of Arrival, with the filing of the entry documentation, via any CBP-authorized electronic data interchange system.

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5. Section 12.113 is revised to read as follows:

§12.113 Arrival and entry of shipment of pesticides and devices.

(a) Notice of Arrival form filed with CBP. Upon entry of a shipment of pesticides or devices into the United States, and concurrent with the filing of the entry documentation, CBP must be in receipt of a completed Notice of Arrival of Pesticides and Devices (Notice of Arrival)

on U.S. Environmental Protection Agency (EPA) Form 3540-1 or its electronic alternative submitted via any CBP-authorized electronic data interchange system. A completed Notice of Arrival must have been signed by the Administrator and indicate any action to be taken by CBP with respect to the shipment. CBP will compare entry information for the shipment of pesticides or devices with the information in the Notice of Arrival and notify the Administrator of any discrepancies.

(b) EPA Notice of Arrival declaration form not presented. When a shipment of pesticides or devices arrives and entry is attempted in the United States without a completed Notice of Arrival having been filed with CBP pursuant to paragraph (a) of this section, the shipment will be detained by CBP at the importer's risk and expense until the completed Notice of Arrival is presented to CBP or until other disposition is ordered by the Administrator. Such detention is not to exceed a period of 30-calendar days, or such additional extended 30-calendar day detention period as CBP may for good cause authorize. An importer or its agent may request an extension of the initial 30-calendar day detention period by filing a request with the director of the CBP port of entry.

(c) Disposition of pesticides or devices remaining under detention. A shipment of pesticides or devices that remains detained or undisposed of due to the failure to timely submit to CBP a completed Notice of Arrival will be treated as a prohibited importation. CBP will cause the destruction of any such shipment not exported by the consignee within 90-calendar days after the expiration of the detention period specified or authorized by paragraph (b) of this section.

6. Section 12.114 is revised to read as follows:

§12.114 Release or refusal of delivery.

If the EPA directs the port director to release the shipment of pesticides or devices, the shipment will be released to the consignee. If the EPA directs the port director to refuse delivery of the shipment, the shipment will be refused delivery and treated as a prohibited importation. The port director will cause the destruction of any shipment refused delivery and not exported by the consignee within 90-calendar days after notice of such refusal of delivery.

7. Section 12.115 is revised to read as follows:

§12.115 Release under bond of shipment detained for examination.

If the EPA so directs, a shipment of pesticides or devices will be detained at the importer's risk and expense by the port director pending an examination by the Administrator to determine whether the shipment complies with the requirements of the Act. However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is furnished on CBP Form 301, or its electronic equivalent, containing the bond conditions set forth in §113.62 of this chapter, for the return of the merchandise to CBP custody, and upon entry of the merchandise and the satisfaction of all other applicable laws. The bond will be in an amount deemed appropriate by CBP. When a shipment of pesticides or devices is released to the consignee under bond, the pesticides or devices must not be used or otherwise disposed of until the determination on compliance with the requirements of the Act is made by the Administrator.

§ 12.116 [Amended]

8. Section §12.116 is amended: in the first and last sentences, by removing the word “shall” each place that it appears and adding in each place the word “will”; and, in the last sentence, by removing the phrase “, in writing,”.

§ 12.117 [Amended]

9. Section 12.117 is amended by removing the word “shall” each place that it appears and adding in each place the word “will”.

R. Gil Kerlikowske

Commissioner, U.S. Customs and Border
Protection

Approved: September 26, 2016

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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